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7   UNITED STATES DISTRICT COURT

8   EASTERN DISTRICT OF CALIFORNIA

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10   LALIT KUMAR,   Case No. 1:23-cv-001263-JLT-EPG

11   Plaintiff,

12   v.   ORDER DIRECTING CLERK OF COURT TO
                                               TERMINATE PENDING MOTION TO
13   UR M. JADDOU, et al.,   DISMISS AS MOOT AND TO CLOSE THIS
                                               CASE IN LIGHT OF PLAINTIFF'S NOTICE
14   Defendants.   OF VOLUNTARY DISMISSAL WITHOUT
                                               PREJUDICE
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                                               (ECF NOS. 6, 8, 9)
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18   On October 20, 2023, Plaintiff filed a notice of voluntary dismissal without prejudice

19   under Rule 41(a)(1)(A)(i). Rule 41(a)(1)(A)(i) permits a Plaintiff to dismiss an action without a

20   court order by filing "a notice of dismissal before the opposing party serves either an answer or a

21   motion for summary judgment."

22   The Court acknowledges that Defendants have filed a motion to dismiss, since amended,

23   which remains pending. (ECF Nos. 6, 8). However, Plaintiff still has the right to dismiss this

24   case:

25   Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his
          action prior to service by the defendant of an answer or a motion for summary
          judgment. Even if the defendant has filed a motion to dismiss, the plaintiff may
26   terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1).

27   *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (internal citation omitted).

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Accordingly, IT IS ORDERED as follows:

1. The Clerk of Court is directed to terminate as moot Defendants' motion to dismiss. (ECF Nos. 6, 8).

2. In light of Plaintiff's notice of voluntary dismissal, this case has been dismissed without prejudice. (ECF No. 9).

3. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: **October 23, 2023**   /s/ Erica P. Grosjean

UNITED STATES MAGISTRATE JUDGE